

**STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION**

Amend subsection (b)(178), Section 7.50  
Title 14, California Code of Regulations  
Re: Silver King Creek

- I. Date of Initial Statement of Reasons: December 13, 2005
- II. Date of Pre-adoption Statement of Reasons: February 22, 2006
- III. Date of Amended Pre-adoption Statement of Reasons: May 24, 2006
- IV. Date of Final Statement of Reasons: July 10, 2006
- V. Dates and Locations of Scheduled Hearings:
  - (a) Notice Hearing: Date: February 3, 2006  
Location: Sacramento
  - (b) Discussion Hearing: Date: March 3, 2006  
Location: Riverside
  - (c) Discussion Hearing: Date: April 7, 2006  
Location: Monterey
  - (d) Discussion Hearing: Date: May 4, 2006  
Location: Kings Beach
  - (e) Adoption Hearing: Date: June 23, 2006  
Location: Mammoth Lakes

- ## VI. Update:

The amount of water closed to fishing on Silver King Creek was significantly reduced by the modification of the original closure area put forth in the Initial Statement of Reasons. There was a concern from Alpine County that the original closure area proposed in the Initial Statement of Reasons would significantly restrict public use and commercial horse packing activities in their county. Based on the concerns expressed by representatives from Alpine County at the May 4, 2006 hearing, the Commission adopted the modified regulation for a shorter reach of stream to be closed to fishing than was in the original proposal.

The Commission adopted the modified proposed changes to the regulations closing Silver King Creek below Llewellyn Falls downstream to Tamarack Lake Creek at their June 23, 2006 meeting.

VII. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Description of Proposed Action by Public: The Silver King Creek Agenda item needs to be moved to a later Commission Meeting to allow ample time for notification.

Proposal Source: Henry "Skip" Veatch, (fax, dated April 5, 2006).

Recommendation: No action.

Analysis: The scheduled agenda meetings were held according to the original agenda.

Description of Proposed Action by Public: The proposed closure of six miles of stream would be a hardship to the local businesses and the Little Antelope Pack Station and its clients.

Proposal Source: Mark Bergstrom, Joe Cereghino, Barry Kingston, and Henry "Skip" Veatch, (Fish and Game Commission meeting May 4, 2006), Joe Cereghino and Tim Cereghino (e-mail to the Fish and Game Commission April 5, 2006):

Recommendation: The proposed regulation was modified to minimize impacts to all local businesses.

Analysis: The new proposed regulation would move the downstream boundary of the closed area from Snodgrass Creek to the confluence of Silver King Creek and Tamarack Lake Creek. The length of the closed stream reach below Llewellyn Falls would change to about 3,600 feet (rather than approximately 6 miles down to Snodgrass Creek). There are existing trout angling opportunities in lower Silver King Creek and the East Fork Carson River. This will reduce the economic hardships to local businesses.

Description of Proposed Action by Public: The Alpine County Board of Supervisors is opposed to a permanent closure of these waters. They suggest the Department close the area for one year and review that closure annually to determine if additional yearly closures are necessary.

Proposal Source: Don Jardine, (Fish and Game Commission meeting May 5, 2006) and Gunter E. Kaiser, (letter to the Commission dated April 28, 2006):

Recommendation: Not supported.

Analysis: The Department encourages collaborative efforts; however, the risk to the Paiute cutthroat trout is still present. The Commission modified the

emergency regulation at their last meeting. The change reduced the closed area from 6 miles downstream to 3,600 feet downstream of Llewellyn Falls.

Description of Proposed Action by Public: Do not close Silver King Creek. It is unlikely that a person would illegally move a rainbow trout from below the falls to above them. It's more likely that a predator bird or mammal would transport a rainbow trout above the falls. Local business, especially campgrounds and sporting goods stores, in Walker, Coleville, Bridgeport and those in the Markleeville area would be affected by loss of income. The local pack guide would suffer financially from this closure.

Proposal Source: Liz Weirauch (email to the Fish and Game Commission on April 5, 2006 representing the Angler's Edge), Liz Weirauch (email to the Fish and Game Commission on April 5, 2006 representing the High Sierra Fly Casters), Jim Donald, (email to the Commission on April 6, 2006), Edward Brown, (e-mail to the Commission on June 13, 2006), Barry Kingston, (Fish and Game Commission meeting on April 7, 2006) and Laura Ann Lueders, email to Commission on April 6, 2006:

Recommendation: Not supported

Analysis: The Department believes that the risk to the Threatened Paiute cutthroat trout from illegal movement of non-native trout would be greatly reduced by closing angling below Llewellyn Falls. Further, the protection of the genetic integrity of the Paiute cutthroat trout, a federally listed threatened species, outweighs the loss of angling opportunity that would occur from a closure until the Paiute cutthroat could be re-established below Llewellyn Falls following restoration actions identified in the Revised Recovery Plan for the Paiute Cutthroat Trout.

The new proposed regulation would move the downstream boundary of the closed area from Snodgrass Creek to the confluence of Silver King Creek and Tamarack Lake Creek. The length of the closed stream reach below Llewellyn Falls would change to about 3,600 feet (rather than approximately 6 miles down to Snodgrass Creek). In addition, there are existing trout angling opportunities in lower Silver King Creek and the East Fork Carson River. This will reduce the economic hardships to local businesses.

Description of Proposed Action by Public: The Department should pursue the closure of Silver King Creek.

Proposal Source: John K. Regan, (letter to the Commission on April 2, 2006)

Recommendation: No recommendation.

Analysis: The Department continues to seek regulation changes to protect the Paiute cutthroat trout and closure of Silver King Creek is included in the regulatory proposal.

Description of Proposed Action by Public: The USFWS will take lead on the Paiute Cutthroat Trout Recovery Project.

Proposal Source: Steve Thompson US Fish and Wildlife Service, (letter to DFG Director on March 13, 2006)

Recommendation: Support

Analysis: The Department supports the USFWS efforts on the Paiute Cutthroat Trout Recovery Project.

Description of Proposed Action by Public: They oppose the use of pesticides and the reintroduction of native Paiute cutthroat trout above the Llewellyn Falls. They are also opposed to the proposed closure below Llewellyn Falls.

Proposal Source: Dave Zellmer, Chairman, Alpine County Fish and Game Commission (letter to Commission on April 5, 2006):

Recommendation: Not supported.

Analysis: The Department believes that the risk to the Paiute cutthroat trout from illegal movement of non-native trout would be greatly reduced by closing angling below Llewellyn Falls. Further, the protection of the genetic integrity of the Paiute cutthroat trout, a federally listed threatened species, outweighs the loss of angling opportunity that would occur from a closure until the Paiute cutthroat trout could be re-established below Llewellyn Falls following restoration actions identified in the Revised Recovery Plan for the Paiute cutthroat Trout.

Description of Proposed Action by Public: The issue is that Department stocked the trout that are threatening the Paiute cutthroat trout above the falls. The Department created this issue and the state's citizens are paying the costs.

Proposal Source: Paul Weakland, (Fish and Game Commission meetings on May 4, 2006 and June 23, 2006):

Recommendation: No Action.

Analysis: This proposed regulation change does not modify existing hatchery policies.

VIII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:  
California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

IX. Location of Department files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

X. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives were identified in the Initial Statement of Reasons.

(b) No change Alternative:

The changes are necessary to safeguard the recovery of a federally threatened species.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation

XI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The adopted regulation affects a short stream reach in a remote wilderness area of northern California.

(b) Impact on the Creation or Elimination of Jobs Within the State, the

Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The adopted regulation affects a short stream reach while leaving a larger area available to anglers.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

## Updated Informative Digest /Policy Statement Overview

Current law (Section 200, Fish and Game Code) delegates authority to the Fish and Game Commission to regulate the taking or possession of birds, mammals, fish, amphibia, and reptiles. The Commission's regulations may establish, extend, shorten, or abolish open and closed seasons; establish, change, or abolish bag limits, possession limits, and size limits; establish and change areas or territorial limits for their taking; and/or prescribe the manner and means of taking (Section 205, Fish and Game Code). Current law (Section 315, Fish and Game Code) further states that the Commission may, at any time, close any stream, lake, or other inland waters, or portions thereof, to the taking of any species or subspecies of fish to protect and properly conserve the fish.

Emergency regulations adopted on August 18, 2005 for Silver King Creek between Llewellyn Falls and Snodgrass Creek expired on December 22, 2005. Current general trout and salmon fishing regulations provide that fishing is open from the last Saturday in April through November 15, and as such, the area between Llewellyn Falls and Snodgrass Creek was opened to fishing on April 29, 2006, while Silver King Creek and tributaries including lakes above Llewellyn Falls remains closed to fishing. The Department is proposing to permanently adopt the expired emergency regulations and close to all fishing all year in Silver King Creek and tributaries including lakes above Snodgrass Creek. This action is necessary to help prevent the unauthorized movement of nonnative trout from below Llewellyn Falls to above Llewellyn Falls.

At the May 4, 2006 Fish and Game Commission meeting, representatives of the Alpine County Board of Supervisors and other interested parties from Alpine County suggested that the proposed regulations for a closed fishing season on Silver King Creek was a hardship to County interests and offered an alternative regulation that would retain some fishing opportunity on Silver King Creek. The new proposed regulation would move the downstream boundary of the closed area from Snodgrass Creek to the confluence of Silver King Creek and Tamarack Lake Creek. The length of the closed stream reach below Llewellyn Falls would change to about 3,600 feet (rather than approximately 6 miles down to Snodgrass Creek).

Other waters in existing portions of the watershed currently closed to angling would remain closed.

**The Commission adopted the modified proposed changes to the regulations closing Silver King Creek below Llewellyn Falls downstream to Tamarack Lake Creek at their June 23, 2006 meeting.**

## Regulatory Language

**Subsection (b)(178) of Section 7.50, Title 14, CCR, is amended as follows:**

7.50. Alphabetical List of Waters with Special Fishing Regulations.

(b)

Area or Body of Water	Open Season	Bag Limit
(178) Silver King Creek and tributaries (Alpine Co.) including lakes above <del>Llewellyn Falls</del> <u>Tamarack Lake Creek (within section 7 T7N R22E).</u>	Closed to all fishing all year	

NOTE:

Authority: Sections 200, 202, 205, 215, 220, 240, 315 and 316.5, Fish and Game Code.

Reference: Sections 200, 205, 206, 215 and 316.5, Fish and Game Code.